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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Quannah, Archer City, Converse, Flatonia, )  
Georgetown, Ingram, Keller, Knox City, )  
Lakeway, Lago Vista, Llano, McQueeney, )  
Nolanville, San Antonio, Seymour, Waco and )  
Wellington, Texas, and Ardmore, Durant, )  
Elk City, Healdton, Lawton and Purcell, )  
Oklahoma.) )

MM Docket No. 00-148  
RM-9939  
RM-10198

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SEP - 9 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Office of the Secretary  
Attn: The Commission

**OPPOSITION TO "MOTION FOR LEAVE TO FILE STUDY  
OF 'TUCK' REPORTED DECISIONS"**

Rawhide Radio, L.L.C., Capstar TX Limited Partnership, Clear Channel Broadcasting Licenses, Inc., and CCB Texas Licenses, L.P. (collectively, the "Joint Parties"), by their counsel, hereby oppose the *Motion for Leave to File Study of "Tuck" Reported Decisions* ("Motion") filed by Charles Crawford ("Crawford") in the above captioned proceeding. Crawford's *Motion* requests that the Commission accept his *Supplement* to his *Opposition* to the Joint Parties' *Application for Review*. However, the *Motion* should be denied as procedurally and substantively defective. It is procedurally defective because Crawford provides no reason why the information in the underlying *Supplement* could not have been included in his *Opposition*. The *Motion* is substantively defective because even if timely filed, Crawford's study of *Tuck* decisions has no direct bearing on the outcome of this proceeding. In support hereof, the Joint Parties state as follows:

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1. Crawford's *Supplement* claims to be, and in fact is, nothing more than a reference to Commission decisions applying the first local service standards set forth in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Crawford does not analyze any case cited in his *Supplement* and, more importantly, provides no evidence that the result reached in this proceeding is inconsistent with any prior Media Bureau or Commission decision involving the application of *Tuck*. Rather, Crawford attempts to argue that the application of *Tuck* usually results in "a determination that a first local service status should be awarded" as evidence that the application of *Tuck* in general is flawed. See *Motion* at p. 1. Further, even if Crawford's argument has any merit, he has not shown why this proceeding rather than a generic proceeding is the proper forum to raise the argument.

2. It seems clear that when Crawford states that "...the study should be a useful resource to aid the agency's decision, also in any future briefing of that decision" (*Motion* at p.1), he is using this forum to enter this information into the record so that he can then put himself in a position to raise it in an appellate forum. The Commission should not be used for this purpose. The information has not been shown to have any relevance to whether the Commission should accept the Joint Parties proposal and issue a Notice of Proposed Rule Making. Therefore Crawford's *Motion* should be denied.

3. Notwithstanding Crawford's untimely and immaterial *Supplement*, the Joint Parties also strongly disagree with Crawford's claim that, because the application of *Tuck* usually results in a determination that a first local service status should be awarded to a community, the general application of *Tuck* is flawed. See *Motion* at p. 1. Crawford seems to be arguing that the Media Bureau and the Commission apply *Tuck* in a ministerial manner, without discussing the facts of each case. However, Crawford conveniently ignores the fact that whenever the Media


Bureau or Commission is faced with a decision involving *Tuck*, they extensively discuss the facts of the case and apply those facts to past precedent. Further, there are numerous legitimate reasons why the Commission would typically find that a community meets the *Tuck* standard. In this regard it is not surprising that it is common practice for broadcasters who are advised by attorneys and engineers to offer communities that meet the *Tuck* standard. Therefore, when applying *Tuck*, the Commission is usually considering communities that clearly meet the *Tuck* standard. As a result of applicants following Commission case law, most cases involving *Tuck* are granted. Indeed, it would be surprising if this were not the case, given the well-known standards applied under this policy.

WHEREFORE, for the reasons stated, the Joint Parties respectfully request that the Commission deny Charles Crawford's *Motion for Leave to File Study of "Tuck" Reported Decisions*.

Respectfully submitted,

RAWHIDE RADIO, LLC

By:

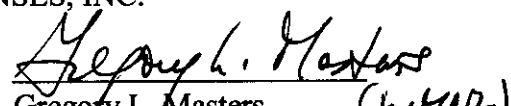
  
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I, Lisa M. Holland, a Secretary in the law firm of Vinson & Elkins, do hereby certify that on this 9th day of September 2004, I caused copies of the foregoing "**Opposition**" to be mailed, first class postage prepaid, or hand delivered, addressed to the following persons:

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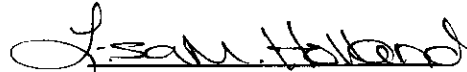
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\* Hand Delivered